

BEFORE THE ETHICS COMMISSION
FOR THE STATE OF TENNESSEE
AT NASHVILLE

IN RE: JONATHAN DAGLEY,

Respondent.

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)	No. 2008-68A
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CONDITIONAL CLASS 2 ASSESSMENT ORDER

This matter came on to be heard by the Tennessee Ethics Commission ("Commission") on December 11, 2008 at its regularly scheduled meeting, upon presentation by staff of documentation in the file tending to show that Respondent had not filed a 2008 statement of disclosure of interests statement ("Statement") as required by Tenn. Code Ann. §§ 8-50-501 - 8-50-502, and that more than thirty-five (35) days had passed since Respondent had received notice by certified mail of an assessment for this failure to file, from all of which the Commission finds as follows:

FINDINGS OF FACT

1. Duty to File. Respondent, held a local public office as Alderman for the city of Wartburg in 2008, and was required to file a Statement, as required by Tenn. Code Ann. §§ 8-50-501 and 8-50-502. This Statement was due to be filed no later than January 31, 2008. In June, 2008, the Commission sent Mr. Dagley a warning letter regarding the failure to file.
2. Class 1 Assessment letter. On July 16, 2008, Mr. Dagley received by certified mail, return receipt requested, a show cause notice setting forth the factual basis of the violation, the maximum penalty, and the date a response to the letter had to be filed. The letter also stated the Commission intended to consider, at its August 26, 2008 meeting, assessment of Class 1 civil penalties for failure to timely file a Statement. The letter set forth the date, place, and time of the meeting, and informed Mr. Dagley of his opportunity to participate in an informal show cause proceeding at the meeting, either by appearing personally or by submitting a sworn statement and documents.
3. Class 1 offense. Mr. Dagley did not respond to the notice. At its meeting of August 26, 2008, the Commission found that Mr. Dagley had committed a class 1 offense by failing to file a statement on time, and that the maximum penalty of seven hundred fifty dollars (\$750) should be imposed pursuant to Tenn. Code Ann. § 3-6-205(a)(1). A conditional order to this effect was issued on September 10, 2008. Mr. Dagley received the order by certified mail, return receipt requested, on September 15, 2008.

4. Class 2 assessment letter. On November 19, 2008, Mr. Dagley received by certified mail, return receipt requested, an assessment letter setting forth the Commission's intent to consider assessment of a Class 2 civil penalty up to ten thousand dollars (\$10,000) during its December 11, 2008 meeting for failure to file a Statement within thirty-five (35) days of receipt of an assessment letter. The assessment letter informed Mr. Dagley of the factual basis of the violation, the maximum penalty, and the date a response to the letter had to be filed. The letter set forth the date, place, and time of the meeting, and informed Mr. Dagley of his opportunity to participate in an informal show cause proceeding at the meeting, either by appearing personally or by submitting a sworn statement and documents.
5. Class 2 violation. Mr. Dagley failed to file his statement within thirty-five (35) days after receipt by certified mail of Class 1 assessment letter on July 16, 2008, thus committing a Class 2 violation as provided by Tenn. Code Ann. § 3-6-205(a)(2).
6. Show Cause Hearing. On November 21, 2008, Mr. Dagley filed with the Commission a petition asking the Commission to show leniency and waive the penalty of seven hundred fifty dollars (\$750.00) on ground that, Mr. Dagley had to go out of town on business for a month and when he returned, this issue slipped his mind. Mr. Dagley filed his disclosure of interest statement on November 21, 2008.

CONCLUSIONS OF LAW

The Commission has previously found that Mr. Dagley had an obligation under the Act to file a Statement for 2008 before January 31, 2008, and failed to do so. The Commission previously imposed a conditional penalty of seven hundred fifty (\$750) dollars for failure to timely file.

Although Mr. Dagley received notice of the previous order on September 15, 2008, he still did not file his Statement with the Commission until two (2) days after he received a notice for the Class 2 violation on November 19, 2008. The Commission considers Mr. Dagley's failure to file his 2008 Statement to be significant. The Commission has taken steps through training, website postings, and notices to help persons required to file Statements to come into compliance with the Act. More than a year and a half has passed since the filing requirements of the Act became effective. Mr. Dagley appears to have been ignoring the Commission since he received the first warning of failure to file in June, 2008. More importantly, he is ignoring the General Assembly by not complying with the Act. The Commission finds that the maximum penalty is appropriate in this case.

The Act authorizes the Commission to administratively assess a civil penalty of not more than ten thousand dollars (\$10,000) if a local public official fails to file a Statement within thirty five (35) days of receipt of an assessment letter. Tenn. Code Ann. § 3-6-205 (a)(2). Since the Commission has already assessed a fine of seven hundred fifty (\$750) dollars for failure to file

timely, the Commission will impose an additional one hundred dollars (\$100.00) penalty assessed at fifty dollars (\$50.00) per day for the Class 2 violation, based on fact that Mr. Dagley filed his Statement two (2) days after receiving the Class 2 notice.

The motion to reconsider the Class 1 penalty of seven hundred fifty dollars (\$750.00) against Mr. Dagley is hereby denied.

This conditional assessment cannot become final until after Respondent has been afforded an opportunity for a contested case hearing. Tenn. Code Ann. § 3-6-107(8). Respondent's failure to participate in the informal assessment process is without prejudice to his rights to a contested case hearing under the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 - 4-5-325.

ORDER

It is therefore ORDERED that a civil penalty in the amount of one hundred dollars (\$100.00) is assessed against Mr. Jonathan Dagley for failure to timely file a Statement.

It is further ORDERED that the Executive Director shall issue this order for the Commission and file it in the Commission's offices.

It is further ORDERED that the Executive Director shall cause to be provided to the Respondent, by either personal service, certified mail return receipt requested, or overnight delivery, a copy of this order, and notice of the following:

Respondent has the right to initiate a contested case proceeding by filing with the Commission, within thirty (30) days of this order, a written request for a contested case hearing in a form that shall be set forth in the notice; and

That in the event of failure to timely file a petition to waive, reduce, or contest the penalty, or a petition for a contested case hearing, the order cannot be appealed to Chancery Court, and will become a final personal judgment against him, and may form a basis for legal action to collect the civil penalty.

It is further ORDERED that this order shall not become final until thirty (30) days after issuance.

SO ORDERED.

Issued this _____ day of _____, 2008

TENNESSEE ETHICS COMMISSION

By: _____

Bruce A. Androphy,
Executive Director